

48A C.J.S. Judges § 291

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

b. Relationship

§ 291. Removal of disqualification

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  55

Disqualification because of a relationship to a litigant or attorney may be removed after the inception of the action or proceeding with the effect of rendering it proper for the judge to reassume jurisdiction in the case; if the relationship is by affinity, the disqualification may be removed by the dissolution of the affinity.

Disqualification because of a relationship to a litigant or attorney may be removed after the inception of the action or proceeding with the effect of rendering it proper for the judge to reassume jurisdiction in the case.¹

While the disqualification of a judge may be removed by the renunciation of interest by the related party,² or by the dismissal of such party from the suit by another judge,³ a judge cannot remove

a disqualification by dismissing the suit as to the judge's relatives.⁴ The disqualification is not affected by the failure of the related party to appear to make defense⁵ or by the fact that such party is indemnified against loss.⁶ The disqualification of a judge for relationship to a party to a suit is not removed by the fact that the judge is related as well to the other party to the suit since there can be no balancing of disqualifications.⁷

Dissolution of affinity.

If the relationship is by affinity, the disqualification may be removed by the dissolution of the affinity⁸ as, for instance, by the death without issue of the blood relative through whom the affinity exists.⁹ While it has been held in such case that the survival of issue will not operate to continue the disqualification,¹⁰ it has also been held that the disqualification will continue where the deceased party left surviving issue.¹¹

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Footnotes

- 1 Haw.—[Chen v. Hoeflinger](#), 127 Haw. 346, 279 P.3d 11 (Ct. App. 2012), as corrected, (Mar. 12, 2012).
As to effect of disqualification, generally, see § 335.
- 2 Mich.—[Knickerbocker v. Worthing](#), 138 Mich. 224, 101 N.W. 540 (1904).
As to withdrawal of attorney from case, see § 293.
- 3 Tex.—[Miller-Vidor Lumber Co. v. Schreiber](#), 298 S.W. 154 (Tex. Civ. App. Beaumont 1927), writ refused, (Nov. 23, 1927).
- 4 Tex.—[Gains v. Barr](#), 60 Tex. 676, 1884 WL 8701 (1884).
- 5 Ga.—[Bivins v. Bank of Richland](#), 109 Ga. 342, 34 S.E. 602 (1899).
- 6 N.Y.—[Oakley v. Aspinwall](#), 3 N.Y. 547, 1850 WL 5357 (1850).
- 7 Ky.—[Com.](#), by [Cooper v. Howard](#), 267 Ky. 287, 102 S.W.2d 18 (1937).
- 8 N.Y.—[Carman v. Newell](#), 1 Denio 25, 1845 WL 4323 (N.Y. Sup 1845).
- 9 Ga.—[Georgia Power Co. v. Moody](#), 186 Ga. 343, 197 S.E. 844, 117 A.L.R. 798 (1938).
Tex.—[Yerby v. Martin](#), 38 S.W. 541 (Tex. Civ. App. 1897).
- 10 Neb.—[Zimmerer v. Prudential Ins. Co. of America](#), 150 Neb. 351, 34 N.W.2d 750 (1948).
- 11 Ga.—[Georgia Power Co. v. Moody](#), 186 Ga. 343, 197 S.E. 844, 117 A.L.R. 798 (1938).

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